

**A SUBSTITUTE ORDINANCE BY  
FINANCE/ EXECUTIVE COMMITTEE**

**08-O-0741**

**AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF A GRANT FROM THE GEORGIA DEPARTMENT OF TRANSPORTATION IN THE AMOUNT OF \$54,000.00; AUTHORIZING THE DISTRIBUTION OF THE GRANT MONEY AS REQUIRED BY THE GEORGIA DEPARTMENT OF TRANSPORTATION; AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO ENTER INTO AN AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION REGARDING THE ACCEPTANCE AND DISTRIBUTION OF THE GRANT MONEY; AUTHORIZING THE DEPOSIT OF GRANT MONEY INTO COST CENTER (N41S0602QNA0) AND ACCOUNT (3340999) STATE GRANT/ENTITLEMENTS; AUTHORIZING THE DISTRIBUTION OF THE GRANT MONEY FROM COST CENTER (N41S0602QNA0) AND ACCOUNT (5239004) SERVICE GRANTS; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta ("City") owns the John Lewis sculpture ("Sculpture"), created by Thornton Dial ("Artist"), and located in the John Lewis Commemorative Park; and

**WHEREAS**, the City is responsible for the long-term preservation of the Dial sculpture and has a preservation plan and endowment fund for such purpose; and

**WHEREAS**, the City's preservation plan does not include involvement by the Artist; and

**WHEREAS**, the Georgia Department of Transportation ("GDOT") has awarded the City a grant to pay for the Artist's services ("Grant"); and

**WHEREAS**, the Grant is in the amount of \$54,000.00 and does not require that the City pay any matching funds; and

**WHEREAS**, pursuant to the Grant conditions, GDOT will provide the City the full amount of the Grant upon execution of a Grant agreement between the City and GDOT. After receiving the Grant funds, the City immediately shall pay the entire amount to the Artist in one lump sum. The Artist will then provide preservation assistance to the City regarding the Sculpture as the Artist, in his sole discretion, deems it necessary to preserve the integrity of the Sculpture.

**THE CITY COUNCIL OF THE CITY OF ATLANTA GEORGIA, HEREBY ORDAINS as follows:**

**Section 1:** That the Mayor, on behalf of the City, is hereby authorized to accept a grant in the amount of \$54,000.00 from the Georgia Department of Transportation to be paid to Thornton Dial for preservation work on the John Lewis sculpture. GDOT's Grant conditions require, among other things, the following:

- a) The City shall receive the \$54,000.00 Grant money from GDOT in one lump sum;
- b) The City, after receiving the \$54,000.00 shall immediately provide this total amount to the Artist in one lump sum;
- c) The City or its representative, including but not limited to the Freedom Park Conservancy, shall notify the Artist prior to the City's implementing any conservation efforts on the Sculpture, and shall invite Mr. Dial to participate in the conservation project; and
- d) Mr. Dial's decision of whether to participate in a Sculpture conservation project shall be at his sole discretion, decided on a project by project basis, without any impact on the Artist's retention of the full \$54,000.00.

**Section 2:** That the City shall not bear any costs or pay any matching funds in exchange for receipt of the Grant.

**Section 3:** That the Mayor, on behalf of the City, is hereby authorized to execute an agreement with GDOT setting forth the Grant terms, and said agreement shall be substantially the same as the agreement attached hereto as Exhibit A (the "Agreement"). The City Attorney or her designee is hereby directed to prepare said Agreement for execution by the Mayor, to be approved as to form by the City Attorney or her designee. Said Agreement shall not become binding on the City, and the City shall incur no liability upon the same until the Agreement has been executed by the Mayor and attested to by the Municipal Clerk.

**Section 4:** That the Department of Finance is authorized to deposit Grant Funds into cost center (N41S0602QNA0) and account (3340999) State Grant/Entitlements and to authorize the distribution of the grant money from cost center (N41S0602QNA0) and account (5239004) Service Grants.

**Section 5:** That all Grant funds, totaling \$54,000.00 shall be paid to the Artist in one lump sum immediately upon their receipt from GDOT.

**Section 6.** That all ordinances and resolutions in conflict herewith are hereby waived for purposes of this Ordinance only, and only to the extent of said conflict.

**ORDINANCE****BY FINANCE/ EXECUTIVE COMMITTEE**

**AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF A GRANT FROM THE GEORGIA DEPARTMENT OF TRANSPORTATION IN THE AMOUNT OF \$54,000.00; AUTHORIZING THE DISTRIBUTION OF THE GRANT MONEY AS REQUIRED BY THE GEORGIA DEPARTMENT OF TRANSPORTATION; AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO ENTER INTO AN AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION REGARDING THE ACCEPTANCE AND DISTRIBUTION OF THE GRANT MONEY; AUTHORIZING THE DEPOSIT OF GRANT MONEY INTO ACCOUNT NUMBER 3340999 STATE GRANT/ENTITLEMENTS; AUTHORIZING THE DISTRIBUTION OF THE GRANT MONEY FROM ACCOUNT NUMBER 5239004 SERVICE GRANTS; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta ("City") owns the John Lewis sculpture ("Sculpture"), created by Thornton Dial ("Artist"), and located in the John Lewis Commemorative Park; and

**WHEREAS**, the City is responsible for the long-term preservation of the Dial sculpture and has a preservation plan and endowment fund for such purpose; and

**WHEREAS**, the City's preservation plan does not include involvement by the Artist; and

**WHEREAS**, the Georgia Department of Transportation ("GDOT") wants to include the Artist in the City's preservation efforts and has awarded the City a grant to pay for the Artist's services ("Grant"); and

**WHEREAS**, the Grant is in the amount of \$54,000.00 and does not require that the City pay any matching funds; and

**WHEREAS**, pursuant to the Grant conditions, GDOT will provide the City the full amount of the Grant upon execution of a Grant agreement between the City and GDOT. After receiving the Grant funds, the City immediately shall pay the entire amount to the Artist in one lump sum. The Artist will then provide preservation assistance to the City regarding the Sculpture as the Artist, in his sole discretion, deems it necessary to preserve the integrity of the Sculpture.

**NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA GEORGIA, as follows:**

**Section 1:** The Mayor, on behalf of the City, is hereby authorized to accept a grant in the amount of \$54,000.00 from the Georgia Department of Transportation to be paid to Thornton Dial for preservation work on the John Lewis sculpture. GDOT's Grant conditions require, among other things, the following:

- a) The City shall receive the \$54,000.00 Grant money from GDOT in one lump sum;
- b) The City, after receiving the \$54,000.00 shall immediately provide this total amount to the Artist in one lump sum;
- c) The City or its representative, including but not limited to the Freedom Park Conservancy, shall notify the Artist prior to the City's implementing any conservation efforts on the Sculpture, and shall invite Mr. Dial to participate in the conservation project; and
- d) Mr. Dial's decision of whether to participate in a Sculpture conservation project shall be at his sole discretion, decided on a project by project basis, without any impact on the Artist's retention of the full \$54,000.00.

**Section 2:** The City shall not bear any costs or pay any matching funds in exchange for receipt of the Grant.

**Section 3:** The Mayor, on behalf of the City, is hereby authorized to execute an agreement with GDOT setting forth the Grant terms, and said agreement shall be substantially the same as the agreement attached hereto as Exhibit A (the "Agreement"). The City Attorney or her designee is hereby directed to prepare said Agreement for execution by the Mayor, to be approved as to form by the City Attorney or her designee. Said Agreement shall not become binding on the City, and the City shall incur no liability upon the same until the Agreement has been executed by the Mayor and attested to by the Municipal Clerk.

**Section 4:** All Grant funds shall be deposited into account number 3340999 State Grant/Entitlements.

**Section 5:** All Grant funds, totaling \$54,000.00 shall be paid to the Artist in one lump sum immediately upon their receipt from GDOT, and shall be charged to and paid from account number 5239004 Service Grants.

**Section 6.** All ordinances and resolutions in conflict herewith are hereby waived for purposes of this Ordinance only, and only to the extent of said conflict.

**AGREEMENT  
BY AND BETWEEN  
GEORGIA DEPARTMENT OF TRANSPORTATION  
AND  
CITY OF ATLANTA  
REGARDING TRANSPORTATION ENHANCEMENT ACTIVITY  
PROJECT TEE-0006-00 (653), PI NO. 0006653**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2008, by and between the DEPARTMENT OF TRANSPORTATION, an agency of the State of Georgia, hereinafter referred to as the "DEPARTMENT", and the City of Atlanta, hereinafter referred to as the "CITY".

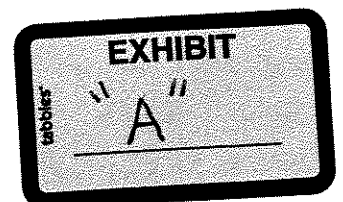
WHEREAS, the CITY has been approved by the DEPARTMENT to carry out a Transportation Enhancement Activity which consists of: **Project TEE-0006-00 (653), P.I. No. 0006653, Fulton County**, hereinafter referred to as the "PROJECT". As used in this Agreement, the term "PROJECT" shall mean those elements of the preservation work for Thornton Dial's John Lewis Sculpture that include Mr. Dial pursuant to this Agreement, including without limitation: a) All correspondence between the CITY, or the CITY's representative, and Thornton Dial or his representative arising from the terms of this Agreement; b) All payment from the CITY to Thornton Dial emanating from this Agreement; c) All activities performed by Thornton Dial pursuant to this Agreement; d) All reports, drawings, studies, specifications, estimates, maps and computations prepared by Thornton Dial and/or his representatives or subcontractors pursuant to this Agreement. Any preservation work for Thornton Dial's John Lewis Sculpture that does not involve Mr. Dial shall not be deemed to be part of the PROJECT; and

WHEREAS, the DEPARTMENT is authorized to receive federal funding for Transportation Enhancement Activities for Georgia pursuant to provisions of Title 23, Chapter 2, Subchapter 1, Section 133; and

WHEREAS, the DEPARTMENT finds that the PROJECT is expected to positively impact the quality of transportation in the State of Georgia and the DEPARTMENT desires to financially participate in the implementation of the PROJECT; and

WHEREAS, under Section 32-2-2(a)(7) of the Official Code of Georgia Annotated, the DEPARTMENT is authorized to participate in such an undertaking.

NOW, THEREFORE, the DEPARTMENT and the CITY, both governmental entities of the State of Georgia, pursuant to Article IX, Section III, Paragraph I(a) of the Georgia Constitution of 1983, and in consideration of the mutual promises and covenant contained herein, do hereby agree as follows:



1. **Scope and Procedure.** The scope of the Project is attached as EXHIBIT A hereto and incorporated herein by reference.

2. **Commencement Date and Term.** This MOU shall commence on the \_\_\_\_ day of \_\_\_\_\_, 2008 (hereinafter referred to as the "Commencement Date"). The CITY shall perform its responsibilities for the PROJECT, commencing on receipt of written "Notice to Proceed" from the DEPARTMENT, and shall complete the PROJECT no later than **December 31, 2012.**

This Agreement may be extended or continued in force by mutual consent of the parties and evidenced by a written amendment thereto.

3. **Compensation and Payment.** It is agreed that the compensation hereinafter specified includes both direct and indirect costs chargeable to the PROJECT under generally accepted accounting principles and as allowed in the Federal Acquisition Regulations Subpart 31.6 and not prohibited by the Laws of the State of Georgia.

The compensation to the CITY shall be subject to the terms and conditions herein stated, and shall be a Firm Fixed amount of **Fifty-four Thousand** and No/100 Dollars (**\$54,000.00**). The total federal contribution for this PROJECT is **Forty-three Thousand Two Hundred** and No/100 Dollars (**\$43,200.00**) and the total state contribution is **Ten Thousand Eight Hundred** and No/100 Dollars (**\$10,800.00**). The combined amount, **Fifty-four Thousand** and No/100 Dollars (**\$54,000.00**), is the maximum amount of the DEPARTMENT's obligation. Upon receipt of the \$54,000, the CITY shall immediately provide all of these funds to Thornton Dial, hereinafter sometimes referred to as the "Sculptor". The Sculptor will undertake to perform the work on the Project as he, in his sole discretion, deems it necessary in order to preserve the integrity of the Thornton Dial Sculpture (the "Sculpture") located at the John Lewis Commemorative Parkway.

The CITY shall submit to the DEPARTMENT copies of all correspondence between the CITY, or the City's representative, and the Sculptor or his representative.

The CITY agrees that acceptance of the \$54,000 payment from the DEPARTMENT shall be in full and final settlement of all money owed by the DEPARTMENT to the CITY pursuant to this Agreement.

The CITY shall allow the DEPARTMENT to examine and verify its firm fixed price payment for the Project. If the DEPARTMENT's examination of the CITY's records shows that the City did not pay the full \$54,000 for the Project, the CITY shall immediately be responsible for reimbursing the DEPARTMENT the full amount of the \$54,000 money not paid.

4. **Covenants Against Contingent Fees.** The CITY shall comply with all relevant requirements of all Federal, State and local laws. The CITY warrants that it has not employed or retained any company or person, other than a bona fide employee working

solely for the CITY, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CITY, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the DEPARTMENT shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

5. **Termination.** Either party may terminate this Agreement for cause or without cause upon ninety (90) days written notice to the other and such termination shall be at no cost to either of the parties.

6. **Amendments.** This Agreement may not be amended except by mutual consent in writing by the parties.

7. **No Assignment.** This Agreement shall not be assigned by any party to any other person or entity whatsoever unless agreed to by the parties.

8. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

9. **Notices.** Any notices, requests, demands and other communications which may be required hereunder shall be in writing and shall either be mailed or transmitted by either first class United States certified mail, return receipt requested; delivered by carrier or personally delivered to the appropriate party; or facsimile transmission, immediately followed by a telephone call to confirm delivery to:

Georgia Department of Transportation  
No. 2, Capitol Square  
Atlanta, Georgia 30334  
ATTN: Carleton Fisher

City of Atlanta, Office of Cultural Affairs  
Public Art Manager  
675 Ponce de Leon  
5<sup>th</sup> Floor,  
Atlanta, Georgia 30308  
ATTN: Eddie Granderson

The date upon which such notice is delivered will be deemed the date thereof. Either party may, from time to time, by five (5) days' prior notice to the other party in writing, specify a different address to which notices will be sent. Rejection or refusal to accept a notice or inability to deliver a notice because of a changed address of which no notice was given will be deemed a delivery of the notice on the date when postmarked.

**10. Review of Work.** Authorized representatives of the DEPARTMENT and the Federal Highway Administration, ("FHWA"), may at all reasonable times review and inspect all PROJECT documentation arising from the terms of this Agreement.

The CITY shall keep accurate records in a manner approved by the DEPARTMENT with regard to PROJECT documentation arising from this Agreement.

**11. Maintenance of Contract Cost Records.** The CITY shall maintain or cause to be maintained all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the PROJECT, and shall make such material available at all reasonable times during the period of the Agreement and for three years from the date of final payment under this Agreement, for inspection by the DEPARTMENT and any reviewing agencies, and copies thereof shall be furnished upon request.

**12. Ownership of Documents.** The CITY agrees that all reports, drawings, studies, specifications, survey notes, estimates, maps, computations, computer diskettes and printouts and other data prepared by or for it by or at the direction of the Sculptor pursuant to the terms of this Agreement shall be delivered to, become and remain the property of the DEPARTMENT upon termination or completion of the PROJECT work. The DEPARTMENT shall have the right to use the same without restriction or limitation and without additional compensation to the CITY other than that provided for in this Agreement.

**13. No Waivers.** No failure of a party to exercise any power given such party hereunder or to insist upon strict compliance by the other to its obligation hereunder and no custom or practice of the parties in variance with the terms hereof shall constitute a waiver of any rights of a party to demand exact compliance with the terms hereof.

**14. Interpretation.** The parties stipulate that for good business reasons, each party has determined to negotiate, and each party has had significant voice in the preparation of this Agreement. Should any provisions of this Agreement require judicial interpretation, it is agreed that the Court interpreting or construing it shall not construe the Agreement more strictly against either party because it drafted the particular provision, or the provision was for the party's benefit, or the party enjoyed a superior bargaining position.

**15. No Third Party Beneficiaries.** Nothing herein shall be construed as conferring upon or giving to any person, other than the parties hereto, any rights or benefit under or by reason of this Agreement.

**16. Risk Allocation.** Each party will conduct its own functions under this Agreement in accord with state law at its own sole cost, risk and responsibility.

**17. Entire Agreement.** This Agreement supersedes all prior discussions and agreements between the parties with respect to the application and any other subject matter, which is a subject of this Agreement. Neither this Agreement nor amendments to



this Agreement shall be binding on either party until and unless it shall be fully executed by both, and in case of amendment, have express reference to and be made a part of this Agreement.

**18. Effective Date.** This Agreement shall become effective upon the date above first written.

**19. Governing Law.** This Agreement shall be deemed to have been executed in Fulton County, Georgia, and all questions of interpretation and construction shall be governed by the laws of the State of Georgia.

**20. Compliance with Applicable Law.**

A. IT IS CERTIFIED that the CITY has read and understands Attachment A of this Agreement and will comply in full with said provisions.

B. IT IS CERTIFIED that the CITY has read and understands the provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-Free Workplace Act" as stated in Attachment B of this Agreement and will comply in full with the provisions set forth in Attachment B.

C. IT IS FURTHER CERTIFIED that the CITY has read and understands the provisions of the "CITY Certification Regarding Debarment, Suspension and Other Responsibility Matters" as stated in Attachment C of this Agreement and will comply in full with the provisions set forth in Attachment C.

D. IT IS FURTHER CERTIFIED that the CITY has read and understands the regulations for "COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964," as amended, and 23 CFR 200 et.seq. as stated in Attachment D of this Agreement and will comply with the provisions of Attachment D.

E. The CITY certifies that, with regard to this Agreement, it has fully complied with the provisions of Sections 45-10-20 through 45-10-28 of the Official Code of Georgia Annotated relating to Conflict of Interest and State Employees and Officials Trading with the State. The DEPARTMENT certifies that, with regard to this Agreement, it has fully complied with the provisions of Sections 45-10-20 through 45-10-28 of the Official Code of Georgia Annotated relating to Conflict of Interest and State Employees and Officials Trading with the State.

F. The CITY acknowledges and agrees that failure to complete appropriate certifications or the submission of a false certification shall result in the termination of this Agreement pursuant to the provisions of Paragraph 5.

G. IT IS FURTHER AGREED that the CITY shall use its best efforts to subcontract a minimum of Zero percent (0%) of the total amount of PROJECT funds

to Disadvantaged Business Enterprise (DBE) as defined and provided for under the Federal Rules and Regulations 49 CFR 26 et.seq.

H. IT IS FURTHER AGREED that, for its transactions arising from this Agreement, the CITY shall comply and shall require its subcontractors to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et.seq. and 49 U.S.C. 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791; and regulations and amendments thereto.

I. IT IS FURTHER AGREED that for its transactions arising from this Agreement, the CITY shall, and shall require its contractors and subcontractors to, comply with all applicable requirements of the Davis-Bacon Act of 1931, 40 U.S.C. 276(a); as prescribed by 23 U.S.C. 113, for Federal-aid highway projects, except for projects located on roadways classified as local roads or rural minor collector, which are exempt.

The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed their seals the day and year above first written.

**DEPARTMENT OF TRANSPORTATION  
RECOMMENDED:**

\_\_\_\_\_  
State Transportation Planning Administrator

\_\_\_\_\_  
Director, Transportation Planning, Data,  
& Intermodal Development Division

\_\_\_\_\_  
Chief Engineer

BY: \_\_\_\_\_  
Commissioner

ATTEST:

\_\_\_\_\_  
Treasurer

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_

**CITY OF ATLANTA**

BY: \_\_\_\_\_ (SEAL)  
Name: **SHIRLEY FRANKLIN**  
Title: **MAYOR**

Signed, sealed and delivered this \_\_\_\_\_ day  
of \_\_\_\_\_, 2008, in the presence of:

\_\_\_\_\_  
NOTARY PUBLIC

ATTEST:

\_\_\_\_\_  
MUNICIPAL CLERK

\_\_\_\_\_  
Commissioner, Department of Parks,  
Recreation and Cultural Affairs

APPROVED AS TO FORM:

\_\_\_\_\_  
Senior Assistant City Attorney  
RECOMMENDED

\_\_\_\_\_  
Chief Procurement Officer

## CERTIFICATION OF CITY

I hereby certify that I am the \_\_\_\_\_ and duly authorized representative \_\_\_\_\_ of \_\_\_\_\_ the \_\_\_\_\_ whose address is \_\_\_\_\_. I hereby certify to the best of my knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, 'Disclosure Form to Report Lobbying', in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

The CITY also agrees that the language of this certification shall be included in all subcontracts and lower tier subcontracts arising from this Agreement which exceed \$10,000.00 and that all such recipients and sub-recipients shall certify and disclose accordingly.

I also certify that neither I nor the above entity I here represent has:

- (a) employed or retained for a commission, percentage, brokerage contingent fee, or other consideration, any firm or person (other than a bona fide

employee working solely for me or the above entity) to solicit or secure this Agreement.

- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the Agreement, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above entity) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement;

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this Agreement involving participation of Federal Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

## CERTIFICATION OF DEPARTMENT OF TRANSPORTATION

### STATE OF GEORGIA

I hereby certify that I am the Commissioner of the Department of Transportation of the State of Georgia, and that the above consulting firm, or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this Agreement to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as here expressly stated, (if any):

I acknowledge that this certificate is to be furnished to the Federal Highway Administration, U.S. Department of Transportation, in connection with this Agreement involving participation of Federal Highway Funds, and is subject to applicable State and Federal Laws, both criminal and civil.

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Date

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Commissioner

## **ATTACHMENT A**

### **CERTIFICATION OF COMPLIANCES**

I hereby certify that I am a duly authorized representative of the CITY whose address is 55 Trinity Avenue, Atlanta, Georgia and it is also certified that:

#### **I. PROCUREMENT REQUIREMENTS**

The below listed provisions of Federal Procurement requirements shall be complied with for transactions arising pursuant to this Agreement throughout the contract period:

- (a) 49 CFR Part 18 Section 36  
Uniform Administrative Requirements for Grants and Cooperative  
Agreements to State and Local Governments – Procurement
- (b) 23 CFR 635 Subpart A – Contract Procedures

#### **II. STATE AUDIT REQUIREMENT**

The provisions of Section 36-81-7 of the Official Code of Georgia Annotated, relating to the "Requirement of Audits" shall be complied with throughout the contract period in full such that the CITY will submit its annual general audit during each year of the term of this Agreement.

#### **III. FEDERAL AUDIT REQUIREMENT**

The provisions of OMB Circular A-133 issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156 shall be complied with throughout the contract period in full such that the CITY will submit its annual general audit during each year of the term of this Agreement. The audit shall be conducted in accordance with Generally Accepted Government Auditing Standards.

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Date

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Signature

Dianne Harnell Cohen  
Commissioner, Department  
of Parks, Recreation  
and Cultural Affairs

## ATTACHMENT B

### CERTIFICATION OF CITY DRUG-FREE WORKPLACE

- (1) The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-Free Workplace Act" have been complied with in full; and
- (2) A drug-free workplace will be provided for the CITY's employees during the performance of the Agreement; and
- (3) Each subcontractor hired by the CITY pursuant to this Agreement shall be required to ensure that the subcontractor's employees are provided a drug-free workplace. The CITY shall secure from that subcontractor the following written certification: "As part of the subcontracting agreement with the CITY, <the subcontractor> certifies to the CITY that a drug-free workplace will be provided for the subcontractor's employees during the performance of this Agreement pursuant to paragraph (7) of subsection (b) of the Official Code of Georgia Annotated Section 50-24-3"; and
- (4) It is certified that the CITY will not engage in unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the contract.



## **ATTACHMENT C**

### **CITY CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The CITY certifies that it has read and understands the attached instructions and that to the best of its knowledge and belief the CITY and its current representatives (in their capacity as City representatives):

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by the Georgia Department of Transportation and by any Federal department or agency;
- (b) Have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against the CITY or its representatives for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State, or Local) transaction or contract under a public transaction in violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification;
- (d) Have not within a three year period preceding this Agreement had one or more public transactions (Federal, State or Local) terminated for cause or default; and
- (e) That the CITY will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as attached hereto and without motivation, in all lower tier covered transactions arising from this Agreement and in all solicitations for lower tier covered transactions arising from this Agreement.

The CITY acknowledges that this certification is provided pursuant to Executive Order 12549 and 49 CFR Part 29 and that the CITY agrees to abide by the rules and conditions set forth therein for any misrepresentation that would render this certification erroneous, including termination of this Agreement and other remedies available to the Georgia Department of Transportation and Federal Government.

The CITY further acknowledges that this certificate is to be furnished to the Georgia Department of Transportation, in connection with this Agreement involving participation of Federal Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

### **Instructions for Attachment C Certification**

#### **Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions**

1. By signing and submitting this contract the CITY is providing the certification set out in Attachment C.

2. The inability of the CITY to provide the certification required may not necessarily result in denial of participation in this covered transaction. The CITY shall then submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the CITY to furnish a certification or an explanation shall disqualify the CITY from participation in this transaction.

3. The certification, Attachment C, is a material representation of fact upon which reliance is placed by the DEPARTMENT before entering into this transaction. If it is later determined that the CITY knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the DEPARTMENT may terminate this transaction for cause of default.

4. The CITY shall provide immediate written notice to the DEPARTMENT if at any time the CITY learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in these instructions and the certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.

6. The CITY agrees by entering this Agreement that it shall not knowingly enter into a lower tier covered transaction arising from this Agreement with a person/firm who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the DEPARTMENT.

7. The CITY further agrees by entering this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", as provided by the DEPARTMENT without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions arising from this Agreement.

8. A CITY in a covered transaction may rely upon a certification of a prospective participant in lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. The CITY may decide the method and frequency by which it determines the eligibility of its principals.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by these instructions. The knowledge and information of the CITY is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if the CITY in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction in addition to other remedies available to the Federal

Government, the Georgia Department of Transportation may terminate this transaction for cause or default.

## ATTACHMENT D

### NOTICE TO CITY COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

During the performance of this Agreement, the CITY, for itself, its assignees and successors in interest (hereinafter referred to as the "CITY"), agrees as follows:

(1) **Compliance with Regulations:** The CITY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the Regulations [also 49 CFR Part 27]), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The CITY, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, national origin, or sex in the selection and retention of subcontractors arising from this Agreement, including procurement of materials and leases of equipment arising from this Agreement. The CITY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations with regard to any transactions arising from this Agreement, including employment practices when the contract covers a program, set forth in Appendix B of the Regulations. In addition, the CITY will not participate either directly or indirectly in the discrimination prohibited by 23 CFR 200 in any transactions arising from this Agreement.

(3) **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiations made by the CITY, pursuant to this Agreement, for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the CITY of the CITY's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin or sex.

(4) **Information and Reports:** The CITY will provide all information and reports arising from this Agreement and required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions, but only where such documents arise from this Agreement. Where any information required of the CITY is in the exclusive possession of another who fails or refuses to furnish this information, the CITY shall so certify to the State Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain this information.

(5) **Sanctions for Noncompliance:** In the event of the CITY's noncompliance with the nondiscrimination provisions of this contract, the State Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the CITY under the Agreement until the CITY complies, and/or

(b) cancellation, termination or suspension of this Agreement, in whole or in part.

(6) **Incorporation of Provisions:** The CITY will include the provisions of paragraphs (1) through (6) in every subcontract arising from this Agreement, including procurement of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The CITY will take such action with respect to any subcontract or procurement arising from this Agreement as the State Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the CITY becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CITY may request the State to enter into such litigation to protect the interests of the State, and, in addition, the CITY may request the United States to enter into such litigation to protect the interests of the United States.

## EXHIBIT A WORK PLAN

The Scope and Procedure of the PROJECT is stated as follows:

### **SECTION A - DESCRIPTION OF THE PROJECT**

The City has developed a conservation plan for the Thornton Dial sculpture located in the John Lewis Commemorative Park. The funds provided pursuant to this Agreement will compensate Mr. Dial for his potential involvement with the conservation of the sculpture. The City or its representative, including but not limited to the Freedom Park Conservancy, will notify Mr. Dial prior to implementing any conservation efforts, and Mr. Dial will be invited to participate in the conservation. Mr. Dial's decision of whether to participate shall be at his sole discretion. The funds allocated to the City pursuant to this Agreement shall be provided directly to Mr. Dial in one lump sum at the time of the City's receipt thereof, regardless of whether Mr. Dial participates in the conservation.

### **SECTION B - PROJECT DEVELOPMENT**

The PROJECT shall be developed as follows:

The CITY shall be responsible for the long term preservation of the Dial sculpture located in the John Lewis Commemorative Park. Such preservation may include the analysis and assessment of the material make-up of the sculpture and the carrying out of conservation plan that is in place for the treatment of the sculpture. The program for preservation may include but not be limited to a systematic review of the causes and extent of the deterioration or alteration, documentation to record the condition of the object before, during, and after treatment, and an outline of treatment methods and materials used to stabilize or retard deterioration or prevent damage. The goal is to maintain the integrity of the piece and to ensure that it maintains an aesthetically pleasing appearance, however it is understood by all parties that the sculpture is comprised of metal parts which will naturally deteriorate over time as a result of environmental decay and/or vandalism.

The CITY or its representative, including without limitation the Freedom Park Conservancy, shall notify Mr. Dial prior to each planned conservation effort and shall invite the sculptor to participate in each effort by coming to Atlanta and providing technical assistance and guidance regarding the preservation work. Mr. Dial shall decide whether to participate at his sole discretion. The CITY shall continue to invite Mr. Dial for conservation activities until this Agreement ends or is terminated in accordance with Paragraph 5. Should Mr. Dial participate in the preservation work pursuant to this Agreement, the CITY shall consider Mr. Dial's recommendations and guidance in good faith, but shall not be bound to follow those recommendations. The CITY agrees to keep

the DEPARTMENT apprised of its outreach efforts to Mr. Dial and Mr. Dial's response, and to provide documentation of the same as requested or required by the DEPARTMENT's Project Manager.

### **SECTION C - SUPERVISION AND CONTROL**

The CITY shall perform the services described in the WORK PLAN, Sections A and B of Exhibit A of this Agreement, under such control and supervision by the DEPARTMENT as the DEPARTMENT may deem appropriate.

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Debra F. Harris

Contact Number: (404) 817-6795

Originating Department: Parks, Recreation, and Cultural Affairs

Committee(s) of Purview: Finance/Executive

Chief of Staff Deadline: April 9, 2008

Anticipated Committee Meeting Date(s): April 30 & May 14

Anticipated Full Council Date: May 19, 2008

Legislative Counsel's Signature: Terry Grandison

Commissioner Signature: [Signature]

Chief Procurement Officer Signature: [Signature]

**CAPTION**

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF A GRANT FROM THE GEORGIA DEPARTMENT OF TRANSPORTATION IN THE AMOUNT OF \$54,000.00; AUTHORIZING THE DISTRIBUTION OF THE GRANT MONEY AS REQUIRED BY THE GEORGIA DEPARTMENT OF TRANSPORTATION; AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO ENTER INTO AN AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION REGARDING THE ACCEPTANCE AND DISTRIBUTION OF THE GRANT MONEY; AUTHORIZING THE DEPOSIT OF GRANT MONEY INTO ACCOUNT NUMBER 3340999 STATE GRANT/ENTITLEMENTS; AUTHORIZING THE DISTRIBUTION OF THE GRANT MONEY FROM ACCOUNT NUMBER 5239004 SERVICE GRANTS; AND FOR OTHER PURPOSES.

Mayor's Staff Only

Received by CPO: \_\_\_\_\_  
(date)

Received by LC from CPO: \_\_\_\_\_  
(date)

Received by Mayor's Office: 4/2/08  
(date)

Reviewed by: [Signature]  
(date)

Submitted to Council: \_\_\_\_\_  
(date)